

Eminent Domain in Montana Codes Annotated Summarized by Title

The purpose of this summary is to provide a brief overview of eminent domain related statutes in the Montana Codes Annotated. The statutes that have portions relating to eminent domain are defined in more detail in **Appendix A**. Title 70, Chapter 30, Eminent Domain, and Chapter 31, Relocation Assistance and Fair Treatment of Condemnees are the primary eminent domain statutes with other references to eminent domain and its use located throughout the code. These other sections are generally more specific, often referring to a certain use of eminent domain or restrictions on the use of the power of eminent domain.

MONTANA CONSTITUTION

Section 17. Due process of law.

No person shall be deprived of life, liberty, or property without due process of law.

Section 29. Eminent domain.

Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

TITLE 7 -- LOCAL GOVERNMENT

General

A local government with self government powers is subject to the provisions in Title 70, Chapter 30, Eminent Domain and Chapter 31, Relocation Assistance and Fair Treatment of Condemnees.

Municipalities

May acquire by eminent domain, as provided in Title 70, Ch. 30, any interest in property to provide any service or facility authorized by law (public use).

The city or town council has the power to condemn private property for opening, establishing, widening, or altering any street, alley, park, sewer, or waterway in the city or town and for establishing, constructing, and maintaining any sewer, waterway, or drain ditch outside of the corporate limits of the municipality or for any other municipal and public use. For an ordinance authorizing the taking of private property for any of these uses it must be shown that the "taking" is necessary. The ordinance must also conform with the requirements in Title. 70, chapters 30 and 31, concerning eminent domain.

In addition to the powers which a municipality may already have, any municipality also has power to: construct, acquire (by gift, purchase, or the exercise of the right of eminent domain), reconstruct, improve, better, or extend any undertaking. This undertaking may be within or without the municipality or partially within or partially without the municipality. The municipality may also acquire by gift, purchase, or the exercise of the right of eminent domain lands or rights in land or water rights connected to that land;

County Water and/or Sewer Districts

Any incorporated district may:

Construct, purchase, lease or otherwise acquire, operate, and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, and lands. They may also construct, purchase, lease, or otherwise acquire, operate, and maintain rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for beneficial purposes. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

If the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, the district may acquire by eminent domain from that water association any type of property referred to in this section

To acquire a private water supply system, the governing body, upon passing a resolution giving notice to the person or corporation that it desires to purchase the plant, franchise, or water supply, may purchase the plant, franchise, or water supply upon terms agreed to by the parties. However if terms can not be agreed upon, the governing body may take the plant, franchise, or water supply by eminent domain. They must comply with Title 70, chapters 30 and 31, MCA.

Water Supply and Regulation

In the case where a city or town can not acquire a private water supply system through private negotiations, they may proceed to acquire the plant or water supply under the laws relating to the taking of private property for public use. Any city or town acquiring property using these laws must make payment to the owner or owners of the plant or water supply, for a value that has been legally determined, within 6 months after final judgment is entered in the condemnation proceedings

The city or town council shall also procure appropriate water rights, title, and the necessary real and person property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise.

Cities or towns are authorized to condemn private property in the manner provided by law and have the authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement, which includes the jurisdiction and control over the territory occupied by their public works and supply systems.

Local Government Transportation Services

For a controlled access facility, highway authorities may acquire by gift, devise, purchase, or condemnation in the same manner as may now or may in the future be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

Railway Authorities

Railway authorities may acquire property for a public purpose in the same manner as a county, except that the authority DOES NOT HAVE THE POWER OF EMINENT DOMAIN with respect to property owned by another authority or by a political subdivision or property owned by a railroad corporation

unless the interstate commerce commission or another authority with power to make the finding has found that the public convenience and necessity permit discontinuance of rail service to the property.

County Roads

When a right of way is condemned, a certified copy of the judgement of the court must be made.

Each board of county commissioners may acquire deposits or quarries of suitable road building material, by condemnation, or lease.

Laws relating to establishing, altering, and vacating county roads, including the exercise of the right of eminent domain, apply to stock lanes

Ferries and Wharves

The board of county commissioners is authorized to construct or acquire, by condemnation or purchase, the right to operate, maintain, direct, regulate, and control the operation of a ferry across an unfordable body of water together with all the necessary boats, grounds, roads, approaches, landing, and improvements. The board has full jurisdiction and authority to operate and maintain the ferry or wharf free or for toll.

When there are lands necessary for the construction, erection, or use of a ferry, which cannot be procured by agreement between the owner and the landowner, the right-of-way and all other lands necessary for the use and construction or erection of the ferry may be acquired by condemnation.

Municipal Parking

A city or town council has the power to acquire by lease, gift, purchase, or condemnation lots or lands for use as parking areas for motor vehicles.

For the purpose of off-street parking, each parking commission has the power to acquire by the exercise of the power of eminent domain any property. Condemnations must be completed in accordance with the applicable provisions of the law of eminent domain upon approval of the city council.

No property of a state public body may be acquired without its consent.

No existing parking facility can be acquired by the exercise of the power of eminent domain by a commission or the city except after a public hearing. The public hearing must follow a notice giving the date, time, place, and purpose of the hearing. This notice must be published once at least 10 days before the date of the hearing, but not more than 20 days prior.

Air transportation

The city or town council has power to acquire by lease, gift, purchase, or condemnation lots or lands for landing fields or parking areas for aircraft.

Housing and Construction

Urban renewal

A municipality has the power to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise any real property and such personal property as may be necessary for the administration of urban renewal projects.

After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described is necessary for an urban renewal project, a municipality has the right to acquire by condemnation any interest in real property which it deems necessary for such purpose.

Condemnation for urban renewal of blighted areas is declared to be a public use. Property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain, may be condemned for the purpose of urban renewal.

Compensation for real property taken for an urban renewal project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, in the project area, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the property owner of the institution of proceedings to condemn the property. Evidence shall be admissible bearing upon the unsanitary, unsafe, substandard condition, or the unlawful use of the premises.

Municipal Housing Authorities

An authority has the power to acquire by eminent domain any real property, including improvements and fixtures. The authority may acquire by purchase or by the exercise of its power of eminent domain, any real or personal property for any housing project being constructed or operated by a government.

After the authority adopts a resolution declaring that the acquisition of the property is in the public interest and necessary for public use, the authority has the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary.

The authority may exercise the power of eminent domain pursuant to the provisions of either: Title 70, chapter 30; or, any other applicable statutory provisions for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided that no property belonging to any city or municipality within the boundaries of the authority or to any government may be acquired without its consent. No property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if there be any, having regulatory power over such corporation.

Cultural, Social Services, and Recreation

The counties of the state are authorized to acquire, by purchase, grant, deed, gift, devise, condemnation, or otherwise, lands suitable for public recreation purposes. These sites must offer ready access to a public highway.

Every city or town has the power to acquire by gift, purchase, or condemnation lands for athletic fields and civic stadiums within or without the corporate limits of the municipality.

Cemetery Services

The board of county commissioners has been given the jurisdiction and power to acquire lands for the purpose of a cemetery by purchase, condemnation, gift, or devise.

The commissioners may also condemn cemeteries already established and conducted by private entities or municipal corporations.

TITLE 23 -- PARKS, RECREATION, SPORTS AND GAMBLING

State Parks

After making a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state, the department may acquire those lands, identified in the study, by condemnation to serve as state parks, recreation areas, monuments or historic sites.

Recreation

FWP may not acquire and develop outdoor recreational areas and facilities and land and waters and interests in land and waters for outdoor recreational facilities through the use of eminent domain.

TITLE 35 -- CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

Rural Cooperative Utilities

Cooperatives may exercise the power of eminent domain in the manner provided by Montana law for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems, telephone lines, facilities or systems.

Cemetery Associations

Cemetery associations that are recognized as corporations have the right and power to take private property for public use to be used exclusively for a cemetery or place of burial of the dead. Any power of eminent domain that is used must be done so under the provisions of Title 70, Ch. 30.

TITLE 53 -- SOCIAL SERVICES AND INSTITUTIONS

The Montana Department of Public Health and Human Services may purchase, condemn, or receive by gift either real or personal property that is necessary to carry out its public assistance functions. Title to the condemned property must be taken in the name of the state of Montana for the use and benefit of the department.

TITLE 60 -- HIGHWAYS AND TRANSPORTATION

The acquisition of lands or other property or any interest therein for present or future highway purposes includes the purpose of providing land or other real property easements or rights-of-way for necessary relocation of existing utilities, utility segments, or other easements for facilities or purposes then in place or in effect upon a proposed right-of-way.

Whenever the department of transportation cannot acquire lands or other property or interests in the lands or property at a price or cost which it considers reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in Title 70, chapter 30, against all non-accepting landholders.

In order to direct the attorney general or a county attorney to condemn land, the entity shall adopt an order declaring that (1) public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in 60-4-103; (2) the interest

described in the order and sought to be condemned is necessary for the highway or improvement; (3) the highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

The order creates and establishes a disputable presumption that there is a public necessity of the proposed highway or improvement; that the taking of the interest sought is necessary therefor; that the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

The establishment of the highway location covered by the description and plan shall be ineffective 1 year after filing if no action to condemn or acquire the property has been commenced.

Compensation for crops or similar improvements planted on the lands described are governed by 70-30-302, MCA.

Authorities of the state, counties, incorporated cities and towns, or in cooperation with each other, may acquire private or public property and property rights for controlled access highways, facilities, and service roads. They may be acquired by gift, devise, purchase, or condemnation.

Acquisition of any county road, street, or alley for use as a controlled-access highway or controlled-access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has previously been dedicated.

TITLE 67 -- AERONAUTICS

State Airports

The Department of Transportation may, on behalf of and in the name of the state of Montana, acquire real or personal property by purchase, gift, devise, lease, condemnation proceedings, or otherwise for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities.

The department may not acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality.

For the purpose of acquiring any property, the department may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes. The acquisition of property for any of those purposes is a public use.

Airport Zoning Act

When zoning is not sufficient, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation, in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes (7-1-4124; 67-10-103; MCA), such air right, aviation easement, or other estate or interest in the property for nonconforming structure or use in question as may be necessary.

Municipal Airports

Counties, cities, and towns in this state may, either individually or by the joint action of a county and one or more of the cities and towns within its border, acquire by gift, deed, purchase, or condemnation land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned, or controlled by such county, city, or town.

Any lands acquired, owned, controlled, or occupied by any county, city, or town, individually or pursuant to joint action as herein provided for the purpose of airports and landing fields (67-10-102), are acquired, owned, controlled, and occupied for a public use and as a matter of public necessity, and such counties, cities, and towns, whether acting individually or jointly, have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity.

General Powers of Municipality Relating to Airports

The municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein, including easements, in airport hazards or land outside the boundaries of an airport or airport site, as is necessary to permit safe and efficient operation of the airport; to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards; or to prevent the establishment of airport hazards.

The municipality may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise acquire existing airports and air navigation facilities, provided however it may not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other state without the consent of such municipality or public agency.

In the case of a joint airport board, eminent domain proceedings may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, the proceedings shall be instituted in the names of the constituent public agencies jointly, and the property acquired shall be held by the public agencies as tenants in common until conveyed by them to the joint board.

In the acquisition of airport property by eminent domain proceedings authorized by Title 67, Chapter 10, the municipality shall proceed in the manner provided by the laws governing eminent domain of the state of Montana. The municipality is not precluded from abandoning such proceedings in any case where possession of the property has not been taken.

Airport Authorities

Airport authorities have the power to plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties. For such purposes an authority may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as is necessary to permit the removal,

elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

Airport authorities may also acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities; provided, however, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of such authority, municipality, or public agency.

Extraterritorial Airports

The adjoining state or governmental agency has the power of eminent domain in this state, which, if exercised, must be in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain shall not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.

TITLE 69 -- PUBLIC UTILITIES AND CARRIERS

Pipeline Carriers

Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind, mentioned in this chapter, which shall have filed with the commission its acceptance of the provisions of this chapter, is hereby granted the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or authorization of his, its, or their common carrier pipeline. The manner and method of such condemnation and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads.

Railroads

Railroad companies of any other state, which purchases or leases a railroad or any part thereof in this state shall possess and may exercise and enjoy, as to the control, management, and operation of the road, all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain.

Before making an extension of a rail line into the state or building any branch road or any continuation, the corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of the proposed extension, branch, or continuation and file a copy of the record, certified by the president and secretary, in the Office of the Secretary of State, who shall record the same when presented for record. Thereupon such corporations shall have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate the extension and build, maintain, and operate the branch or continuation, including the right of eminent domain, which it would have had if it had been incorporated for such purposes under the general laws of Montana.

When connecting between lines of different railroads, every corporation whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant facilities therefor. If the two corporations cannot agree upon the amount of compensation to be made, or the points, or the manner of such crossings, intersections, and connections, they shall be ascertained and determined as is provided in Title 70, chapter 30.

Every railroad corporation has the power to purchase lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road and all necessary appendages and adjuncts or acquire them in the manner provided in Title 70, chapter 30, for the condemnation of lands.

TITLE 70 -- PROPERTY

Chapter 30 -- Eminent Domain

This section is summarized more completely due to its contents.

Part 1

70-30-101 Definition

Eminent Domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

70-30-102 Delineation of Public Uses

1. Public Uses Defined by U.S. Government .
2. Public buildings and grounds for use of state and all other public uses authorized by state legislature.
3. Public Use Related to County, City, Town, or School District.
 - Public buildings and grounds for the use of any county, city or town, or school district
 - Canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town
 - Raising the banks of streams, removing obstructions from streams, and widening, deepening, or straightening stream channels
 - Roads, streets, alleys
 - All other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature

Mode of apportioning and collecting the costs of such improvements shall be defined in the statutes or ordinances that allowed for the public use delineation as defined in eminent domain law.

4. Wharves, docks, piers, chutes, booms, ferries, bridges (of all kinds), private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for:
 - PUBLIC TRANSPORTATION
 - SUPPLYING MINES
 - SUPPLYING MILLS
 - SUPPLYING SMELTERS FOR THE REDUCTION OF ORES
 - SUPPLYING FARMING NEIGHBORHOODS WITH:
water and drainage and reclaiming lands
 - FLOATING LOGS AND LUMBER ON STREAMS NOT NAVIGABLE
 - SITES FOR RESERVOIRS NECESSARY FOR COLLECTING AND STORING
WATER

Reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

5. Public Use Related to WORKING MINES, MILLS, and SMELTERS FOR THE REDUCTION OF ORES

- Roads, tunnels, ditches, flumes, pipes, and dumping places for
- Outlets (natural or otherwise) for the flow, deposit, or conduct of tailings or refuse
matter from

- Occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters
- Sites for reservoirs necessary for collecting and storing water

Reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

6. Private roads leading from highways to residences or farms.
7. Telephone or electric light lines.
8. Telegraph lines.
9. Sewerage of:
 - any city, county, or town or subdivision thereof
 - entity can be incorporated or unincorporated
 - any settlement of at least 10 families
 - any public buildings belonging to the state
 - any college or university
10. Tramway lines.
11. Electric power lines.
12. Logging railways.
13. Temporary Logging Roads and Banking Grounds for transportation of logs and timber products to:
 - public streams
 - lakes
 - mills
 - railroads
 - highways

for such time as the court or judge may determine, provided grounds of state institutions are excepted.

14. Underground reservoirs suitable for storage of natural gas.
15. Mine and extract ores, metals, or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others.

surface or strip-mining or open-pit mining of COAL is not a public use

16. Restoration and reclamation of lands strip- or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of these mining actions .

70-30-103 What private property may be taken

1. Private property which may be taken under this chapter:
 - All real property belonging to any person
 - Lands belonging to the State of Montana, any county, city, or town that are not appropriated to some public use
 - Property that IS APPROPRIATED FOR PUBLIC USE. This property must not be taken unless for a more necessary public use than that which it has already been appropriated
 - Franchises for roads, bridges, and ferries and all other franchises must not be taken unless for FREE HIGHWAYS, FREE BRIDGES, RAILROADS, or other MORE NECESSARY public use
 - All rights-of-way for any and all the purposes outlined in 70-30-102 and all structures and improvements located on these rights-of-way

These rights-of-way must be set up so that they can be connected with, crossed, or intersected by any other right-of-way of improvements or structures. They must also be subject to a limited use in common with the owner when necessary; but such uses, crossings, intersections, and connections must be made in the manner most compatible with the greatest public benefit and least private injury.

2. All other classes of property not defined in this section may be taken for public use when the taking is authorized by law.

70-30-104 What estates and rights in land may be taken.

Classification of the estates and rights in lands subject to be taken for public use:

1. Estates or rights necessary (up to and including fee simple) when taken for:
 - PUBLIC BUILDINGS
 - PUBLIC GROUNDS
 - PERMANENT BUILDINGS
 - OUTLET FOR THE FLOW OR A PLACE FOR THE DEPOSIT OF DEBRIS OR TAILINGS OF A MINE
 - MINING AND EXTRACTING OF ORES, METALS, OR MINERALS WHEN THE SAME PROPERTY IS:
 - owned by the plaintiff
 - located beneath or upon the surface of property where the title to the surface vests in others
 - UNDERGROUND STORAGE OF NATURAL GAS BY A NATURAL GAS PUBLIC UTILITY (defined 82-10-301)

When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the designated use, after which the ownership of the residue of natural gas remaining in the reservoir shall belong to the then owners of such reservoir space.

2. Estates or rights in the surface area that are necessary for a reservoir or dam and for the permanent flooding that results up to the top of the maximum pool of the reservoir.
3. An easement, leasehold, or other interest, for as long as the interest is necessary for the purpose described in the complaint, or fee simple when taken for any other use.
4. The right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

70-30-105 Appropriation of underground gas reservoir -- effect on owner's right to drill.

1. When any sand, stratum or formation is appropriated for use as an underground natural gas storage tank, the owners of the surface land, or the oil, gas, or other mineral rights has the right to drill or bore through the appropriated sand, stratum, or formation to explore for, produce, process, treat or market any oil, gas or other minerals.
2. When an underground natural gas storage reservoir is drilled or bored through as described above, any additional costs or expense required to be incurred to protect the underground reservoir against pollution and the escape of the gas shall be paid by the persons, firm, or corporation then owning the underground gas storage reservoir.

70-30-106 Eminent Domain NOT to be used for coal mining in certain cases -- policy.

For the following reasons state's powers of eminent domain may not be exercised to mine and extract coal owned by the plaintiff located beneath the surface of property where the title to the surface is vested in others.

1. Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals and affects large areas of land and large numbers of people.
2. In many areas of Montana set forth in (1), the title to the surface is vested in an owner other than the mineral owner, and the surface owner is putting that surface to a productive use, and it is the public policy of the state to encourage and foster such productive use by such owner, and to permit the mineral owner to condemn the surface owner is to deprive the surface owner of the right to use his property in a productive manner as he determines and is also contrary to public policy as set forth in (4).
3. The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain.
4. It is the policy of the state to encourage and foster diversity of land ownership, and the surface mining of coal and control of large areas of land by the surface coal mining industry would not foster public policy and further the public interest.

70-30-107 Private Roads

Private roads may be opened through the use of eminent domain, however, in every case, the necessity of the road and the amount of damage to be sustained by the opening of the road shall first be determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefitted by putting in the road.

70-30-108 Temporary Logging Roads and Banking Grounds

1. If temporary roads for logging purposes or grounds for banking purposes are opened or taken, the right for using these is temporary.
 - The order of condemnation for a road shall fix the length of time and the date from which the road will be opened or the land used
 - Upon the expiration of this length of time, the right to use the road or land will end
 - The land will revert to the party from whom the land was taken or to his legal successor in interest
 - No lands or grounds shall be taken for a time period greater than 5 years
 - If the lands or grounds are taken for a period exceeding 1 year, the amount of damage of each year shall be fixed separately
 - The amount fixed for each particular year must be paid by January 1 of each year
 - If the fixed amount is not paid for any one year, the use of the lands shall revert to the party from whom the lands or grounds were taken or to his successor in interest
2. In any suit for the opening of any temporary logging road or for the use of any ground or land for banking purposes, the court shall not finally order the opening of such road or the right use such land or ground until the amount assessed as damages has been paid into court for the benefit of the party or parties owning or holding the land.
3. In the event that the land involved in the court case is occupied by a lessee, the lessee shall be made a part to the suit, and the court shall apportion the compensation received between the owner and the lessee through the final decree. This decree is subject to appeal of any party in interest.

70-30-110 Survey and Location of Property to Be Taken -- greatest public good -- least private injury.

1. In all cases where land is required for public use, the state or its agents in charge of such use may survey and locate the area to be taken for public use.

- The area must be located in the manner which will be most compatible with the greatest public good and the least private injury and subject to 70-30-206, MCA
- Upon giving 30 days' written notice to the owners and persons in possession of the land, the state or its agents in charge of such use may enter upon the land and make examination, surveys, and maps of the area
- This entry shall constitute no cause of action in favor of the owners of the land except from injuries resulting from negligence, wantonness, or malice
- Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of his land within 14 days from receipt of the written notice
- The state or its agents shall within 14 days from receipt of such information furnish written notice to such persons

70-30-111 Facts necessary to be found before condemnation

Before property can be taken, the plaintiff must show that the public interest requires the taking based on the following findings:

- that the use of which it is to be applied is a use authorized by law
- that the taking is necessary to such use
- if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use
- that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected

Part 2 -- Preliminary Procedure

70-30-201 Applicable rules of practice.

Except as otherwise provided in Chapter 30, the provisions of Titles 25 and 26 MCA, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence, are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

70-30-202 Jurisdiction and venue -- complaint and summons required.

- Proceedings are brought to the District Court of the county where the property or part of the property is located
- Proceedings are commenced by:
 1. Filing a complaint
 2. Issuing a summons (the summons must contain a notice to the defendant (landowner) to file and serve an answer)
- Within 6 months (unless the court changes this time line), the court, sitting without a jury, shall hold the trial on the issue of *whether a preliminary condemnation order should be issued*

70-30-203 Contents of complaint

The complaint must contain the following:

1. Name of the corporation, association, commission, or person in charge of the public use for which the property is sought (PLAINTIFF).
2. Names of all owners, purchasers under contracts for deed, mortgagees, lienholders of record, and any other claimants of the property of record, if known, or a statement that they are unknown (DEFENDANTS).
3. Statement of the right of the plaintiff.
4. Statements of each of the facts necessary in 70-30-111

- that the use of which it is to be applied is a use authorized by law
- that the taking is necessary to such use
- if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use
- that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected

5. If a right of way is sought, show:

- the location
- the general route
- termini

This information must be accompanied with a map showing these items.

6. A description of each interest in real property sought to be taken and whether the interest to be taken is the whole property or only a part of the entire parcel or tract. A statement that the interest sought is the minimum necessary interest must also be included. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

7. For an underground natural gas storage reservoir site, the following must be provided.

- a description of the sand, stratum, or formation suitable for this use
- a description of the land in which the natural gas is alleged to be contained
- a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from the reservoir
- complaint shall state facts showing that the underground reservoir is one subject to appropriation by the plaintiff
- information stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest
- statement showing that the underground reservoir is suitable and practicable for natural gas storage
- information stating that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated
- a statement that the rights and property sought to be appropriated are not prohibited by law
- complaint must be accompanied by a certificate from the Board of Oil and Gas Conservation as set forth in 82-10-304 MCA

70-30-206 Powers of court -- preliminary condemnation order.

1. The court has the power to:

- regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of Montana and the United States; or
- limit the interest in real property sought to be appropriate if in the opinion of the court the interest sought is not necessary

2. If the court decides that the public interest requires the taking of interest in real property and that the plaintiff has met his burden of proof under 70-30-111, it must make and enter a preliminary condemnation order that the condemnation of the interest in real property may proceed in accordance with the provisions in this chapter.

3. If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage area.
- if the existence and suitability of it for such use has been proved by the plaintiff, the court shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for:
 - his interest in the real property sought to be appropriated and/or
 - as the annual rental for the use of such storage reservoir; and
 - for the use of as much of the surface as is required in the operation of the underground reservoir; and
 - for the use in connection with the creation, operation, and maintenance thereof; and
 - for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property (*the amount paid for such native gas and all thereof shall be no less than the market value of the gas*)
 - the court shall appoint three persons, qualified as experts and recommended by the Board of Oil and Gas Conservation, to assist the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated
 - the fees and expenses of the three appointed persons are chargeable as costs of the proceedings to be paid by the plaintiff
4. After a complaint is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration. The preliminary condemnation proceeding shall be tried by the court sitting without a jury.

70-30-207 Appointment of commissioners -- affidavit -- compensation

1. Within 30 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of the defendant's claim plaintiff fails to accept the claim, the court must appoint condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by the appointed commissioners.
2. If the appointment of the commissioners has not been waived, the court must appoint three qualified, disinterested condemnation commissioners.
- One commissioner is nominated by the party of parties plaintiff
 - One commissioner is nominated by the party or parties defendant
 - One commissioner, who serves as the chairman, is nominated by the two commissioners previously mentioned. (If the two commissioners fail to make this choice, the presiding judge shall make the nomination)
3. Each commissioner shall possess the following qualifications:
- he is possessed of sufficient knowledge of the English language
 - he is a resident of a county within the judicial district in which the action is pending
 - he is not related within the sixth degree to any party; and
 - he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent, or partner or surety as to any party
4. At the time of the meeting and nominations, each nominating party or judge shall file with the court an affidavit of the person so nominated stating:

- that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants
- that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded
- that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court
- that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court

The court shall specify the compensation of the condemnation commissioners (*which cannot exceed \$250 per hearing day including expenses*). The condemning party shall pay the compensation of the commissioners nominated.

Part 3

Hearing, Judgement, and Subsequent Proceedings

70-30-301 Hearing -- judge to preside -- determinations by commissioners

1. The commissioners appointed shall meet at the time and place stated in the order appointing them. This meeting shall not be more than 10 days after the order of appointing. They shall proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within the said 10 day period they shall hear the allegations and evidence of all persons interested in each of the pieces of land.
2. The presiding judge shall attend and preside over the hearing. The judge shall make all necessary rulings upon procedure and the admissibility of evidence.
3. At the conclusion of the hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine the following:
 - the current fair market value of the property and all improvements thereon pertaining to the realty and of each and every separate estate and interest. If it consists of different parcels, the current fair market value of each parcel and each estate or interest must be separately assessed
 - if the property sought constitutes only a part of a larger parcel, the depreciation in current fair market value which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvements in the manner proposed by the plaintiff
 - separately, how much the portion not sought to be condemned and each estate or interest will be benefitted, if at all, by the construction of the improvements proposed by the plaintiff; and if the benefit is equal to the loss in value decided above. If the benefit is equal to or greater than the loss, the owner of the parcel shall not be compensated except for the value of the portion actually taken. If the benefit is less than the loss, the benefit shall be subtracted from the loss and this value will be the only amount allowed in addition to the current fair market value
 - if the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad and the cost of cattle guards where fences may cross the line of such railroad

If there are 2 or more estates of divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said property first determined with the defendants acting

as one. Thereafter, in the same proceedings the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.

Chapter 31, Relocation Assistance, Fair Treatment of Condemnees

This chapter provides for uniform and equitable treatment of persons displaced from their homes, business, or farms as a result of federally assisted programs, establishes uniform and equitable land acquisition policies for *federally assisted programs*, and complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

This chapter does not directly or indirectly grant any new or additional power of eminent domain.

If the displaced person receives payment required by the laws of eminent domain, no agency is required to provide additional payment or assistance, if it is determined that the two payments have substantially the same purpose and effect.

Payments received due to displacement shall not be considered income for the purposes of determining income under state tax laws.

An agency is authorized to adopt rules necessary to implement this chapter.

An agency which acquires real property for a program or project *for which federal financial assistance will be available to pay all or any part of the program or project*, shall comply with the following policies:

- every reasonable effort shall be made to acquire the property by negotiation
- real property shall be appraised before the initiation of negotiations -- the landowner or his representative may accompany the appraiser
- before the initiation of negotiations, an amount shall be established which is considered to be just compensation. This amount shall be offered for the property and cannot be less than the fair market value of the property. Just compensation for the real property acquired and for the damages to remaining real property shall be separately stated
- no owner is required to surrender property before the agreed purchase price is paid or deposited with the court
- construction or development of a program or project shall be scheduled so that, to the greatest extent possible, no person lawfully occupying real property is required to move from a dwelling or to move his business or farm operation without at least 90 days' written notice
- if an owner or tenant is permitted to occupy the property on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent shall not exceed the fair rental value
- in no event shall the time of condemnation be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred
- if an interest in real property is acquired by exercising the power of eminent domain, formal condemnation proceedings shall be instituted
- if the acquisition of only part of the property would leave the owner with an uneconomic remnant, an offer to acquire the uneconomic remnant shall be made

- a person whose real property is being acquired may donate the property, any interest in the property, or any compensation received for the property -- as long as he is informed of his right to receive just compensation prior to the donation designation

An agency that acquires real property shall reimburse the owner to the extent the acquiring agency deems fair and reasonable for:

- expenses incurred for recording fees, transfer taxes, and similar expenses incidental to conveying property
- penalty costs for prepayment for a preexisting mortgage or deed of trust
- the pro rata portion of property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency or the effective date of possession by the agency-whichever is earlier

Where an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of his property, the court rendering a judgement for the plaintiff in the proceedings shall determine and award or allow such sum as will reimburse the plaintiff for his reasonable costs, disbursements, and expenses incurred because of the proceeding.

Where a condemnation proceeding is instituted and the final judgement is that the real property cannot be acquired by condemnation, the owner shall be paid a sum that will reimburse him for his reasonable attorney, appraisal, and engineering fees actually incurred. This award will be paid by the agency seeking to condemn the property.

Where any interest in real property is acquired, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements which are required to be removed, or which the acquiring agency determines will be adversely affected by the use to which the property will be put.

For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired, the building structure or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant to remove such building, structure, or improvement at the expiration of his term; the fair market value that the building, structure, or improvement contributes to the fair market value of the property acquired or the fair market value of the building structure or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant.

Payment for buildings, structures, or improvements shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all right, title, and interest in and to such improvements. The tenant still has the right to reject payment and to obtain payment for such property interests in accordance with other laws of the state.

TITLE 75 -- ENVIRONMENTAL PROTECTION

Waste and Litter Control

The owner of property is liable for the release or potential release of hazardous substances when a contractual relationship is established which may include but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the property on which the facility is located

was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one of a number of circumstances exists. One of these circumstances is if the person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

Whenever the Department of Environmental Quality determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be done in accordance with procedure outlined in Title 70, chapter 30, parts 1 through 3, MCA.

Landscape Management

The Department of Transportation may acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and which by virtue of 75-15-111(1), MCA is nonconforming. Eminent domain shall be exercised in accordance with the laws of the state.

Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of 75-15-112 or 75-15-132, MCA without payment of compensation.

Except as provided in 75-15-131 and 75-15-132, MCA, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under 23 U.S.C. 131(g), with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state.

When the Department of Transportation determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening of a junk yard, it may acquire by gift, purchase, exchange, or condemnation, the property necessary to secure the relocation, removal, or disposal of the items held in the junk yard.

The Department of Transportation shall pay just compensation to the owner for the relocation, removal, or disposal of any such junkyard facility.

Major Facility Sighting Act

Under the definitions in this section, the commence to construct definition includes the commencement of eminent domain proceedings for land or rights-of-way upon or over which a facility may be constructed.

TITLE 76 -- LAND RESOURCE AND USE

Local Regulations of Subdivisions

Certain divisions of land may not occur. Unless the method of disposition is adopted for the purpose of evading this chapter (chapter 3), the requirements of this chapter may not apply to any division of

land that is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain.

Floodplain and Floodway Management

Cities, towns, and counties may acquire by gift, purchase, or condemnation and appropriation private property within the limits of the project, including the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part.

All provisions of the laws of Montana relating to the condemnation of lands for public purposes shall apply to the provisions insofar as they are applicable.

The cost of all right-of-way acquired by purchase or condemnation together with any other property rights which may be required in furtherance of such projects, may be borne by the city, town, or county.

Open Spaces

To the extent that the provisions of this chapter (chapter 6) are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

This chapter (chapter 6) may not be construed to imply that any easement, covenant, condition, or restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain, or otherwise, and to use land for public purposes.

Wild and Scenic Resources

Subject to the limits of available appropriations, the Board of Land Commissioners is authorized to acquire interests to lands by any lawful means for the purpose of designating natural areas; provided that the board shall exercise the power of eminent domain only in specific instances where authorized by the legislature.

Natural areas acquired or designated in accordance with the provisions of this part are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the condemnation or development.

TITLE 82 -- MINERALS, OIL, AND GAS

General

Whenever the right of eminent domain is exercised to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals owned by the plaintiff, the decree shall be granted on condition that the plaintiff protects the public in the immediate area by agreeing to purchase all property within 300 yards of the surface tract condemned, including vacant lots, provided the owner or owners thereof serve upon the plaintiff and file with the court a written offer stating the amount

asked for such property within 30 days from the entry of the court order appointing the commissioners in the eminent domain proceeding. In the event the plaintiff and the owner or owners are unable to agree upon the compensation to be paid for such property, the court, upon petition of either party, may proceed to determine the compensation to be paid for such property in the manner prescribed in Title 70, chapters 30 and 31, as amended, for ascertaining the value of property taken through the exercise of the right of eminent domain.

Whenever it is sought to condemn streets, roads, alleys, or highways, there shall also be attached to the complaint for condemnation a plat or plats showing the alternate facilities to be proposed and paid for by the plaintiff, and the court, in its final order of condemnation, may order the plaintiff to construct such reasonable and adequate alternate facilities as it deems appropriate under the circumstances.

The measure of compensation for the property located within 300 yards of the surfaced tract condemned shall be the fair market value or the value of similar property in a similar area not affected by open-pit mining operations, whichever the owner of the surface property shall elect to receive.

The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open-pit mining operations.

Any party seeking to condemn property for open-pit mining purposes shall serve notice in writing on all owners and purchasers under contracts for deed of property within 300 yards of the surface tract sought to be condemned or in lieu thereof shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder, and the filing of said plat shall constitute notice to the owner or owners not personally served with written notice as herein provided.

Coal and Uranium Mine Reclamation/Metal Mine Reclamation/Openpit Mining Reclamation

(Each of these three types of mining are located in different parts of the codes, but the procedure for using eminent domain for reclamation purposes is the same and is outlined below.)

The Department of Environmental Quality may acquire the necessary property by gift or purchase. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all non-accepting landholders if:

- the property is necessary for successful reclamation
- the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and
- permanent facilities, such as treatment plant or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or
- acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices

Oil and Gas

Underground Gas Storage Reservoirs

A natural gas public utility may acquire through the exercise of the right of eminent domain for its use for the underground storage of natural gas, an underground reservoir which the Board of Oil and Gas Conservation finds is suitable and in the public interest for the underground storage of natural gas, and in connection with the underground reservoir, the utility may acquire such other interests in property as

may be required adequately to maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

- (a) No sand, formation, or stratum which is producing or has produced or which is capable of producing oil is subject to appropriation under this section.
- (b) No gas-bearing sand, formation, or stratum is subject to appropriation under this section, unless the recoverable volumes of native gas have all been produced or unless the sand, formation, or stratum has a greater value or utility as an underground reservoir for the purpose of insuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas. Or if it serves better conserving natural gas than it does for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas that it originally held. Gas, sand, formation, or stratum may not be acquired under this part when the gas in the underground reservoir is being used for the secondary recovery of oil, unless gas is necessary and required amounts are furnished to the operator of the secondary recovery operations. This gas shall be provided for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary operations. This amount may not exceed the quantity of the appropriated gas that remained recoverable from the sand, formation, or stratum at the time of its acquisition, if the operator was at that time entitled to the whole supply. If the operator was at that time entitled to less than the whole supply, then the amount may not exceed the quantity to which the operator was entitled.
- (c) Only the area of the underground sand, formation, or stratum as may reasonably be expected to be penetrated by gas displaced or injected into the underground gas storage reservoir may be appropriated.
- (d) No rights or interests in existing underground gas reservoirs being used for the injection, storage, or withdrawal of natural gas owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the same are subject to appropriation.

The exercise of the right of eminent domain granted by this section shall be without prejudice to the rights of the owner of the lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in a manner that complies with orders and rules of the board issued for the purpose of protecting the underground reservoir against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of the lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with those rules or orders in order to protect the storage reservoir shall be paid by the natural gas public utility.

A natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain from the Board of Oil and Gas Conservation a certificate setting out the findings of the board:

- (a) that the underground sand, stratum, or formation sought to be acquired is suitable for an underground reservoir for the storage of natural gas and that its use for such purposes is in the public interest;
- (b) the amount of native gas, if any, remaining therein and the portion thereof recoverable; and
- (c) that the applicant has in good faith sought to acquire the rights sought under this part.

The Board of Oil and Gas Conservation may not issue the certificate until after a public hearing is had on the application, pursuant to notice given to all persons known to have an interest in the property

proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action.

TITLE 85 -- WATER USE

Water Resources

The Department of Natural Resources and Conservation may acquire by purchase or exchange, upon terms and conditions and in a manner it considers proper, and may acquire by condemnation, in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned must be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court that has jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

In a condemnation proceeding brought under the powers of eminent domain for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be acquired, as disclosed by the public records, must be made parties and the court in the action shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If there is controversy between them, the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

Taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

Surface and Ground Water

The right to conduct water from or over the land of another for any beneficial use includes the right to raise any water by means of dams, reservoirs, or embankments to a sufficient height to make the same available for the use intended, and the right to any and all land necessary therefor may be acquired upon payment of just compensation in the manner provided by law for the taking of private property for public use.

Irrigation Districts

Nothing in Title 85, chapter 7, MCA may be construed to permit an irrigation district to condemn any property owned or controlled by a rural electric cooperative or a utility, whether publicly or privately owned. An irrigation district is expressly prohibited from condemning such property.

Operation of Districts

The waterworks board has the power and authority to acquire by purchase, lease, contract, condemnation, or other legal means:

- lands and rights in lands for rights-of-way, for reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances.
- other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district or subdistrict system of irrigation works.

The use of all water required for the irrigation of the land of any district, together with the rights-of-way for canals and ditches, sites for reservoirs, and all property required in fully carrying out the provisions of this chapter (7), is declared to be a public use, subject to the regulations and control of the state in the manner prescribed in law.

Navigation shall never in any way be impeded by the operation of this chapter (7), nor shall any vested interest in or to any mining or agricultural water rights or ditches or in or to any water rights, reservoirs, or dams now used beneficially by the owners or possessors thereof in connection with any mining or agricultural industry or by persons purchasing or renting the use thereof or in or to any other property now used, directly or indirectly, in carrying on or in promoting the mining or agricultural industry ever be affected by or taken under its provisions, save and except that rights-of-way may be acquired over the same. The right of eminent domain shall not be otherwise considered abridged by the provisions hereof.

Conservancy Districts

The district may exercise the right of eminent domain in the manner provided by the law to take private property for public use, with just compensation, where the taking is necessary for the purposes of the district. Water rights as such shall not be subject to such taking but may be taken as an incident to the condemnation of land to which such rights are appurtenant, where the taking of the land is the principal purpose of the condemnation.

TITLE 87 -- FISH AND WILDLIFE

Organization and Operation

The Department of Fish, Wildlife and Parks, with the consent of the Fish, Wildlife, and Parks Commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

State-Federal Relationships

The department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-701 through 87-1-703, MCA.

The state of Montana does reserve for itself, acting through its legislature, the right to direct the department to abandon any wildlife restoration projects created and established as the state of Montana may in its judgement think proper, provided the department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-708 through 87-1-710, MCA.

TITLE 90 -- PLANNING, RESEARCH, AND DEVELOPMENT

Secondary Industry and Commercial Development

No municipality or county may operate any project financed by the sale of revenue bonds as a business or in any manner except as the lessor thereof. No municipality or county may acquire any such project or any part thereof by condemnation.